

DONNETTA COOK-THOMAS,

v.

Defendant.

THIS MATTER IS BEFORE THE COURT on *pro se* Plaintiff’s “Motion for Summary Judgment” (Document No. 15) and “Defendant’s Motion To Dismiss For Failure To Comply With Order” (Document No. 17). This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b) and is now ripe for review. Having carefully considered the briefs, the record, and the applicable authority, the undersigned will respectfully recommend that the pending motions be denied without prejudice.

On September 16, 2009, Plaintiff filed an “Extension Of Time For Motion For Summary

Judgment” (Document No. 10). The Court granted the extension, up to and including October 30, 2009, and noted that the evidence the Court may review in this matter would be limited to evidence considered by the Administrative Law Judge. (Document No. 12).

On January 5, 2010, Plaintiff filed a brief letter (Document No. 15) that the Clerk’s office recorded on the docket as a “Motion for Summary Judgment.” This “motion” fails to state with particularity the grounds for a motion, the relief sought, or to include any brief or memorandum of law in support, as required by Local Rule 7.1 and the “Pretrial Scheduling Order” (Document No. 9). Defendant filed its “...Motion To Dismiss For Failure to Comply With Court Order” (Document No. 17) on January 19, 2010.

The undersigned respects Defendant’s position and advocacy, however, out of an abundance of consideration of the Plaintiff’s status as a *pro se* litigant and apparent confusion regarding the Court’s expectations, will respectfully recommend that both pending motions be denied without prejudice and that Plaintiff be allowed one final extension of time to file a motion for summary judgment and memorandum in support.

IT IS, THEREFORE, RECOMMENDED that Plaintiff’s “Motion for Summary Judgment” (Document No. 15) be **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER RECOMMENDED that the Court *sua sponte* allow Plaintiff one more extension of time, until on or before **April 9, 2010**, to file a motion for summary judgment and memorandum of law in support, and that Defendant file its opposition within 60 days of service thereof.

IT IS FURTHER RECOMMENDED that “Defendant’s Motion To Dismiss For Failure To Comply With Court Order” (Document No. 17) be **DENIED WITHOUT PREJUDICE**.

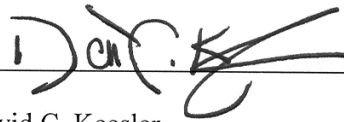
NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein must be filed within **fourteen (14)** days of service of same. Page v. Lee, 337 F.3d 411, 416 n. 3 (4th Cir.2003); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir.1989); United States v. Rice, 741 F.Supp. 101, 102 (W.D.N.C.1990). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir.2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir.1997); Snyder, 889 F.2d at 1365. Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for the Defendant, and the Honorable Frank D. Whitney.

IT IS SO RECOMMENDED.

Signed: March 10, 2010



David C. Keesler
United States Magistrate Judge

